JUDGMENT OF THE COURT (Fourth Chamber)
9 November 1989 *

In Case 353/88

Briantex SAS, of Seregno, Italy,

and

Antonio di Domenico, managing director of Briantex SAS, residing in Seregno,

both represented by Nathan Weinstock of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schintz, 83 boulevard Grande-Duchesse-Charlotte,

applicants,

v

European Economic Community

and

Commission of the European Communities,

both represented by Marie Wolfcarius, a member of the Commission's Legal Department, acting as Agent, assisted by Jean-Luc Fagnart, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendants,

* Language of the case: French.

APPLICATION made under Article 215 of the EEC Treaty for an award of compensation against the defendants in respect of damage allegedly suffered by the applicants in connection with the Commission's organization of an 'EEC-China Business Week',

THE COURT (Fourth Chamber)

composed of C. N. Kakouris, President, T. Koopmans and M. Díez de Velasco, Judges,

Advocate General: F. G. Jacobs
Registrar: D. Louterman, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 27 September 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 October 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 December 1988, Briantex SAS, a company specializing in trade in and the manufacture of household linen and similar products, whose registered office is at Seregno, Italy, and its managing director, Antonio Di Domenico, brought an action for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty against the European Economic Community and the Commission of the European Communities. They seek compensation for the damage which they claim to have suffered in connection with the Commission's organization of an 'EEC-China Business Week' in Brussels.

2 The applicants maintain that the Commission incurred the Community's non-contractual liability towards them by disseminating or causing to be disseminated incorrect and incomplete information which misled the applicants and caused them to suffer loss.

3 In reliance on that information, Mr Di Domenico went to Brussels with a view to placing an order with Chinese representatives there. However, the latter told him at that time that the quota reserved for textile imports from China into Italy had already been exhausted. The applicants consider that they have suffered losses represented by the travel and accommodation costs pointlessly incurred by them, a sum corresponding to four days' work lost as a result of Mr Di Domenico's fruitless journey, and damage resulting from the impossibility of concluding the business transactions which the applicants thought they would be able to conclude.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

5 The defendants contend that the application is partially inadmissible, first because it has been lodged in the name of Mr Di Domenico and he has no *locus standi*, and secondly in so far as the action has been brought against the Commission and the Commission has no legal personality.

6 As regards Mr Di Domenico's *locus standi*, it must be considered that he went to Brussels as managing director of Briantex, that is to say as an executive or agent thereof. The alleged damage arising from his journey and his participation in the business week was therefore suffered by Briantex. Mr Di Domenico therefore has no personal interest in the proceedings and the application must be declared inadmissible to the extent to which it was lodged in his name.

7 As regards the inadmissibility of the application on the ground that the action has been brought against the Commission, it should be borne in mind that where the liability of the Community is incurred by the act of one of its institutions, it is represented before the Court by the institution or institutions accused of the act giving rise to liability (judgment of 13 November 1973 in Joined Cases 63 to 69/72 *Wilhelm Werhahn Hansmühle and Others* v *Council of the European Communities* [1973] ECR 1229). However, it does not follow that the fact of bringing an action

directly against the institution accused of the act in question renders the application inadmissible; such an application must be deemed to be directed against the Community represented by that institution. Consequently, the defendants' objection in that regard must be dismissed.

The substance

8 The Court has consistently held that the Community can incur non-contractual liability and the right to have any damage suffered made good can be enforced only if there was an unlawful act on the part of one of the Community institutions, real damage was suffered, and there was a causal link between the act and the damage.

9 In the present case, the Commission's unlawful act is said to consist in the dissemination of information concerning the EEC-China Business Week which wrongly led the applicants to believe that they would be able to conclude contracts with Chinese participants. In particular, the applicants criticize the Commission for not informing them that the Italian quota had been used up.

10 It is apparent from the documents before the Court and from the answers to the questions put by the Court at the hearing that the only information on which the applicants based their conviction that they would be able to conclude contracts is a passage in a circular from the Italian Institute for Foreign Trade according to which 10 Chinese import-export organizations, with Chinese regional and provincial representatives with authority to take decisions, would be present during the business week.

11 The conclusions which the applicants considered themselves entitled to draw from that document were unfounded. It is merely a communication of general scope which does not in any way suggest that the Chinese representatives would enter into contracts for specific goods. Moreover, as the Commission rightly pointed out, a business week is pre-eminently an opportunity for businessmen to meet, and there is no guarantee that contracts can actually be concluded. In those circumstances, the Commission was under no obligation to advise the participants in such an event of the fact that certain quotas for textiles had been used up.

12 Accordingly, it cannot be contended that the Commission acted unlawfully by disseminating the information concerned in the manner in which it did so. The application must therefore be dismissed.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) Declares the application inadmissible in so far as it was lodged in the name of Mr Di Domenico;

(2) For the rest, dismisses the application as unfounded;

(3) Orders the applicants to pay the costs.

Kakouris Koopmans Díez de Velasco

Delivered in open court in Luxembourg on 9 November 1989.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Fourth Chamber